

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

SERGIO TORRES #276664,

Petitioner,

v.

Case No. 2:04-cv-238
HON. ROBERT HOLMES BELL

GERALD HOFBAUER,

Respondent.

**OPINION AND ORDER APPROVING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION**

The Court has reviewed the report and recommendation filed by the United States Magistrate Judge in this action on August 2, 2005, which recommended denying Respondent's motion to dismiss (docket #18) and granting Petitioner's second motion for order to hold the habeas corpus petition in abeyance (docket #15). The report and recommendation was duly served on the parties. Respondent has failed to file any objections to the report and recommendation. For the reasons set forth in the report and recommendation, the court will deny Respondent's motion to dismiss and will grant Petitioner's second motion to hold the habeas corpus petition in abeyance.

The Court notes that Petitioner has filed a motion for an extension of time to file a response to the report and recommendation (docket #37). However, Petitioner need not file objections to the report and recommendation because the Court is finding in his favor. Therefore, Petitioner's motion for extension of time to file objections is properly denied.

Finally, the Court notes that Petitioner has filed motions for hearing and to produce vital transcripts (docket #27, #28, #29, and #30). However, Petitioner in this case has not exhausted

his state court remedies and his habeas corpus action is currently being held in abeyance. Therefore, these motions are premature and are properly denied.

THEREFORE, IT IS ORDERED that Respondent's motion to dismiss (docket #18) is DENIED.

IT IS FURTHER ORDERED that Petitioner's second motion for order to hold the habeas corpus petition in abeyance (docket #15) is GRANTED. Petitioner's motions for extension of time, for hearing, and to produce vital transcripts (docket #27, #28, #29, #30, and #37) are DENIED.

FINALLY, IT IS ORDERED that this action shall be administratively closed until petitioner has completed exhaustion of his state court remedies. Petitioner shall file with this Court, within 30 days of a final decision by the Michigan Supreme Court, an amended petition adding his newly exhausted claims

IT IS SO ORDERED.

Date: December 22, 2005 /s/ Robert Holmes Bell
ROBERT HOLMES BELL
CHIEF UNITED STATES DISTRICT JUDGE